FCA Consumer Duty Consultation Paper

Scope and Proportionality (CP26/23)

On 30 June 2026, the FCA published Consultation Paper CP26/23, "**Consumer Duty – scope and proportionality**" (the "CP"). The CP responds to the Chancellor's 2025 Mansion House speech and seeks to address industry concerns that the Consumer Duty (the "Duty") has been applied more widely, and more intensively, than intended, particularly in wholesale markets and complex distribution chains.

The Duty came into force in July 2023 with the aim of setting high and consistent standards of consumer protection across retail financial services. While it has delivered positive outcomes, the FCA has observed that some firms are applying the Duty disproportionately, generating unnecessary cost, complexity and uncertainty without corresponding benefit to retail consumers.

To address these concern, the FCA is proposing to make targeted amendments to the existing PRIN rules and its associated non-Handbook guidance to:

- remove business with non-UK customers from the scope of the Duty;
- make it clearer where the Duty does and does not apply;
- clarify when and how firms can rely on each other in distribution chains; and
- explain the interaction between the Duty and other product governance rules.

The consultation period closes on **18 September 2026**, and the FCA expects to publish a Policy Statement and final rules in **Q1 2027**.

Below we summarise the key changes proposed in the CP and provide our thoughts on what they would mean for firms.

Application for non-UK business

Although the FCA's focus in bringing in the Duty was the protection of UK retail clients, the current application provisions of the Duty mean that it can capture non-UK retail clients where FCA sectoral conduct rules apply (eg COBS-regulated investment business conducted by UK firms for overseas retail clients). This can result in overlapping regulatory requirements for firms serving non-UK retail customers.

The FCA is proposing to limit the scope of the Duty to retail market business where the retail customer is "usually resident in the UK". This will be determined by residential address, or place of establishment for non-individuals. Where the customer has a UK address, distributors may assume UK residency unless there is reason to believe otherwise.

The practical effect of the proposed changes is as follows:

- **Wholly non-UK business**: the Duty will not apply to business conducted solely for customers outside the UK. Manufacturers should ensure that products designed only for non-UK distribution reflect this in their distribution strategies.
- **Mixed products/services**: where a product is sold to both UK and non-UK customers, firms need only comply with the Duty in respect of UK-based customers (although firms may apply broader Duty processes to non-UK customers on a voluntary basis).

There are two key exceptions where the Duty will continue to apply even where the customer is outside the UK: (i) UK pre-paid funeral plans; and (ii) UK pension-related activities (including advice on and arrangements relating to Qualifying Recognised Overseas Pension Schemes).

Crown servants with British Forces Post Office addresses are also treated as UK residents for these purposes.

The FCA has clarified that these proposals relate only to the Duty. Other FCA Handbook rules that currently apply to non-UK business (eg COBS) will continue to do so.

Simmons comment

The narrowing of the scope of the Duty to UK clients only is a welcome change for firms with overseas retail customers. Many firms have had to impose contractual obligations and/or request information from non-UK distributors who are not themselves subject to the Duty, in order to satisfy their obligations. This has been a costly and burdensome process with disproportionate benefit to end investors. Whilst the change will require some firms to revisit their implementation across different product and service lines, we expect that overall this change will be well received by the industry.

We also consider that the proposal for a simple residence-based test will be welcomed, ensuring consistency with other established practices.

Principal and secondary manufacturers

The FCA is clarifying its expectations for firms that work together to manufacture retail products and services. The term "co-manufacturer" would be removed and instead, where more than one firm contributes to the manufacture of a retail product, firms would be classified as either a **principal manufacturer** (having substantive control over product design, operation, distribution strategy or value proposition) or a **secondary manufacturer** (contributing to design without substantive control). Secondary manufacturers would have more limited obligations to consider the impact of their contribution and ensure it creates no material risks of foreseeable harm.

It would be the responsibility of the principal manufacturer to ensure that the contribution of all manufacturers is set out in a written agreement (although this does not need to be a specific standalone agreement).

Simmons comment

The co-manufacturing concept has caused confusion for some firms, in particular in respect of products such as model portfolio services which involve a number of firms in the design and delivery of the service. However, whilst clarification is welcome, the creation of these new concepts may be unhelpful for firms who have already reached agreed positions, and entered into written agreements, regarding their role. The FCA is not currently proposing to align similar concepts under PROD and DISC which should limit the impact, although firms may then need to comply with different sets of requirements for different product lines.

The FCA is however seeking feedback on how the proposal could be introduced whilst minimising the burden for firms, including potentially applying the new concepts on a look forward basis to new agreements only. This could help to minimise disruption for existing arrangements.

Clarifications on scope of the Duty

The CP proposes a number of amendments to the Duty's application provisions, which will be consolidated into a new chapter, PRIN 3A covering firms' roles and responsibilities across the distribution chain. These amendments are largely focused on clarifying application of the Duty to firms higher up the distribution chain (eg product manufacturers) who are more remote from end retail customers and who the FCA perceives may currently be applying the Duty in a disproportionate manner.

Key changes include:

- **Retail market business**: the definition is being moved from the Glossary into the rules, and restructured for clarity. The substantive definition (regulated activities, payment services, e-money, ancillary activities) will remain unchanged with the addition of a list of in and out of scope activities. Importantly, the new rules confirm that approving financial promotions, provision of credit references and debt collection services are all expressly in-scope of retail market business.
- **Distribution chains**: the term "distribution chain" will be defined for the first time. The proposed rules clarify that a firms' Duty obligations will attach to their specific role within the chain and firms are not expected to comply with outcomes rules that are irrelevant to their role (eg a firm with no role in consumer communications need not comply with the consumer understanding outcome).
- **Material influence**: the FCA is retaining the material influence concept but putting more emphasis on proportionate and reasonable interpretation of the Duty based on the extent of a firm's involvement with a retail product or service.
- **New activity exclusions**: the following activities are proposed to be expressly excluded from the Duty's scope:
  - merchant acquiring;
  - market making;
  - ESG ratings provision;
  - acting as an indirect access provider (eg for BACS/FPS);
  - provision of certain derivatives or instruments independently incorporated into third-party retail products (on general commercial terms, without tailoring);
  - safeguarding accounts for payment or e-money institutions;
  - custody services (though the Duty may apply if the custodian has a direct relationship with the underlying retail client);
  - depositaries (with exceptions for specific responsibilities such as fund suspension or manager replacement); and
  - supporting defined benefit pension scheme trustees.
- **Outsourcing**: the CP introduces additional non-Handbook guidance on outsourcing arrangements. Where a firm outsources activities to another authorised firm, both firms should consider their respective obligations under the Duty, based on the substance of their activities. Where a firm outsources activities in relation to product manufacture, the outsourcing firm would generally expected to remain the principal manufacturer with the service provider the secondary manufacturer.

Clarifications on scope of the Duty (continued)

Simmons comment

These changes provide helpful clarification, and will hopefully provide comfort, for firms regarding where the boundaries lie in terms of their obligations under the Duty. In particular, it is helpful clarification for wholesale firms up the distribution chain that they do not need to consider outcomes which are not relevant to their role.

The express exclusion of certain activities is also helpful. However, for other firms, the updated rules will still require them to make subjective judgment calls to determine scoping and the FCA has not gone as far as introducing a more binary application criteria which some industry participants were calling for.

Interaction with other firms across the distribution chain

Since the Duty came into force, firms that are part of distribution chains have often expressed uncertainty as to the extent of their responsibility for policing other firms in the chain.

The CP proposes to add additional clarity in the rules and non-Handbook guidance to make it clear that firms are not expected to oversee compliance of other firms with the Duty. Furthermore, where a firm is reliant on information from, or actions of, other firms to meet its own requirements, it may reasonably rely on information and representations made by the other firm about the actions it has taken. However, firms must act in good faith and should not rely on information where it would be unreasonable to do so. The CP and non-Handbook guidance provides an example of how this might work in practice in the context of a model portfolio service.

In addition, the CP proposes to clarify that firms should only notify the FCA in respect of material concerns about the conduct of another firm in the distribution chain. Firms are also given the option of raising the issue first with the other firm, to seek clarification or comfort, before contacting the FCA.

Information sharing across the distribution chain is another area where firms have highlighted challenges, which has often led to oversharing of large volumes of information which is not useful and of variable quality. New rules in PRIN 3A will clarify that firms should focus on collecting information that will enable them to assess customer outcomes, focusing on themes and trends at target market level, not individual clients. Information gathering should be applied proportionately, with new products likely requiring more information to be gathered than established products that are well understood. Furthermore, new rules in PRIN 2A require firms sharing information with other firms in the distribution chain to take reasonable care to ensure that the information can be relied on by the recipient firm.

The FCA states that it is planning further work to assess how information sharing is operating in practice and may consider issuing examples of good practice in due course.

Simmons comment

Information sharing remains a challenging area for firms and levels of feedback provided vary. For some firms response rates remain low, whereas other firms have high response rates but the information doesn't given meaningful (actionable) insight into their influence on retail consumer outcomes and what they may be able to enhance. Whilst it is helpful to have clarification that firms can take a proportionate approach in determining what information is relevant in the context of their role/product or service, the proposals do not go as far as imposing additional obligations on firms in the distribution chain to respond to feedback requests, or its expectations when none is provided.

Consumer vulnerability

The FCA has clarified that manufacturers should consider if the product or service design could lead to additional harms for customers with characteristics of vulnerability, but that for simple products which do not pose additional risks of harm (eg a basic tracker fund), a manufacturer may only need to ensure that its disclosures support customer understanding.

Simmons comment

The FCA's expectations around vulnerability have been challenging for pure manufacturers. Where firms can get comfort that their product doesn't "contain features that present additional risks of harm", this will be a very welcome clarification.

Board reporting

The FCA has acknowledged that Duty-related board reporting has become disproportionately burdensome for some firms, with standalone Duty packs duplicating existing governance materials. It is proposing targeted rule amendments to clarify that:

- **No standalone Duty board report is required**: Duty-related reporting may be incorporated into existing board reporting and governance structures.
- **Reporting must be commensurate with a firm's role**: the scope and depth of board reporting should reflect the extent of the firm's retail market business, its position in the distribution chain, and the risk of harm presented by its activities. Firms with a limited in-scope role should produce correspondingly limited reporting.
- **Frequency must be proportionate**, but at least annual, with clear escalation channels for material issues arising between cycles.

Firms do not need to cover Duty obligations that are not relevant to their role (eg customer communications and support provided entirely by other firms in the chain).

Simmons comment

Many firms will be surprised with the FCA statement that it was never its intention for Duty related board reporting to "be onerous or take up a disproportionate amount of boards' time". Simplifying the reporting and potentially leaning more towards to PROD 3 style compliance reports to the management body may assist firms here.

Interaction with other rules

There is a great deal of overlap between the Duty and requirements under other regimes (eg PROD, MiFID, CCI Regime). However, the current rules provide little ability to rely on substituted compliance, other than in respect of the MiFID product governance rules. The CP provides further guidance on how the Duty sits alongside PROD and the CCI regime, but does not go as far as permitted further substituted compliance:

- **PROD 3**: under the existing rules, the products and services outcome does not apply where PROD 3 applies. However, the price and value outcome continues to apply. The CP explains that from a price and value perspective, it considers the Duty requirement to be more prescriptive than under PROD 3, although firms can rely on their existing PROD arrangements to support compliance with the price and value outcome and the FCA does not expect firms to establish separate processes. The FCA is not, however, proposing to merge or remove PROD 3 at this stage, citing cross-border application, the private right of action under PROD 3 (absent under the Duty), and alignment with EU MiFID frameworks as reasons for caution.
- **CCI regime**: where a firm's role is limited to manufacturing a retail product and it complies with applicable CCI disclosure requirements (including preparing the product summary), this will generally be the primary means by which it meets the consumer understanding outcome. Firms should not assume they need to take additional or duplicative steps solely because both regimes apply. However, the CCI regime does not displace all Duty requirements. For example, firms must still test communications where appropriate from a consumer understanding perspective, which is not mandated by the CCI rules.

Updated non-Handbook guidance will explain how the regimes interact in practice, including a worked example for an investment bank manufacturing retail structured products for third-party distribution. In that example, the FCA confirms that the bank is not responsible for reviewing additional communications designed by its distributors, and may rely on PROD 3 monitoring arrangements to satisfy its Duty monitoring obligations.

Simmons comment

We expect that some firms will be disappointed that the FCA did not go further with substituted compliance. Also, confirmation of the requirement to test CCI communications is likely to increase the current nervousness felt by firms given the lack of a market template and the push to revisit how risk disclosures are worded.

Other clarifications

The CP also contains a number of further technical corrections and clarifications, the most significant of which are:

- **£50,000 exclusion for non-retail financial instruments**: the existing exclusion for financial instruments with a minimum investment of £50,000 will be retained. However, it will be amended to clarify that the exclusion applies per investment and per end investor. It cannot be relied on where multiple investments are aggregated to reach the threshold (eg through a nominee structure). Our view is that this is more clarificatory and is generally in line with how firms have already implemented the exclusion.
- **Board champion**: the non-handbook guidance will be updated to reflect the FCA's expectation that the role is voluntarily.
- **Client categorisation**: the current non-Handbook guidance regarding the application of the Duty to the elective professional client opt-up process has been removed in the proposals. The FCA states that this is due to the potential impact of its separate consultation on proposed changes to client categorisation rules (CP25/36) which could result in changes to the non-Handbook Guidance. The FCA intends to clarify its expectations here through its separate client categorization work.

What happens next?

The FCA is inviting feedback from firms on its proposals before **18 September 2026** and expects to publish its Policy Statement and final rules in **Q1 2027**.